IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.2239 of 1994**

DATE OF DECISION: May 23, 2007

AMIN CHAND, EX.COOK 3/25 ...PETITIONER

VERSUS

THE STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. J.S. MAANIPUR, ADVOCATE FOR THE PETITIONER.
MR. ANMOL RATTAN SIDHU, ADDL.A.G., HARYANA
WITH MR. DEEPAK JINDAL, AAG, HARYANA.

ASHUTOSH MOHUNTA, J.

Challenge in this petition under Articles 226/227 of the Constitution of India is to the orders 14.10.1993 (Annexure P7) and 30.5.1987 (Annexure P5) passed by respondent Nos.2 and 3, respectively, vide which the petitioner, who was working as a Cook in the Haryana Armed Police, has been dismissed on the ground of absence from duty.

On his transfer from Ist Battalion of the Haryana Armed Police, Ambala City to the 3rd Battalion at Hissar on 27.10.1986, the petitioner failed to report for duty at the new station of his posting within the prescribed period of joining for 8 days and he reported for duty at Hissar on 4.12.1986 and thus he absented himself from duty for 34 days without any intimation to the authorities concerned. A regular inquiry was conducted against him. Ultimately, he was dismissed from service vide order 30.5.1987 (Annexure P5) passed by the Commandant, 3rd Battalion

(respondent No.3). His appeal against the order of his dismissal was rejected by the Director General of Police (respondent No.2) vide order dated 15.10.1993 (Annexure P-7). In this petition the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the impugned orders Annexures P5 and P7.

The primary plea taken on behalf of the petitioner is that the petitioner failed to report for duty within the prescribed period for joining owing to the sudden illness of his son who had suffered a polio attack and, thus, the petitioner was compelled to stay at the previous station of his posting, i.e., Ambala City. Learned counsel for the petitioner has contended that mere absence from duty for a period of 34 days was not the gravest act of misconduct commensurate with the punishment of dismissal meted out to the petitioner. The counsel contended that under Rule 16.2. of the Punjab Police Rules, as applicable to the State of Haryana, the punishment of dismissal can be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In support of his contention, the counsel has placed reliance on a Single Bench authority of this Court reported as **Randhir Singh v. Dy.Inspector General of Police, Ambala Range, Ambala Cantt., 2004(4) RSJ 720**. The counsel has also placed reliance on two Division Bench authorities of this Court reported as **P.K.Khanna v. National Fertilizers Ltd. And another, 2005(3) R.S.J. 246, and Jatinder Singh v. State of Haryana and others, 2006(3) RSJ 669.**

The respondents filed detailed written statement in order to controvert the allegations made in the petition. It has been contended on

behalf of the respondents that the petitioner was an incorrigible person. He was in the habit of remaining absent from duty. On earlier occasions also he was awarded punishments for his remaining absent from duty. On one occasion he was awarded the punishment of stoppage of his four annual grade increments and on another occasions he was censured for his absence from duty. On this basis it has been contended that his wilful absence from duty for 34 days without notice amounted to `gravest act of misconduct' which fully justifies his dismissal from the disciplined force like Haryana Armed Police.

I have heard the learned counsel for the parties and examined the case file meticulously with their assistance. In para 4 of the written statement, which goes unrebutted, it has, inter alia, been stated as under:-

> *"4. ... . that the petitioner was in the habit of remaining absent from duty and for this he was awarded not only a punishment of Censure but a punishment of stoppage of 4 increments also. If the son of the petitioner was seriously ill during the period in which he remained absent, then it was the duty of the petitioner to inform the said facts to the department by way of seeking leave for the said period. He should have submitted a written application for leave through post during the initial stage of the period, in which he remained absent……"*

From the above-quoted para of the written statement, it becomes clear that it was not the first occasion that the petitioner remained absent from duty without notice. Rather he was in the habit of remaining absent from duty. Even if suddenly his son had fallen ill and he was constrained to join his duty at Hissar within the prescribed period of joining, he could at least

inform the authorities concerned by posting a letter with regard to the exigency and the compelling circumstances owing to which he was unable to report for duty in time. He did not do so. Rather he continued to remain absent for as long a period as 34 days. In view of his previous conduct as stated in the afore-quoted paragraph of the written statement, coupled with his conduct of not reporting for duty at the new station of his posting at Hissar, I do not feel any hesitation in holding that the conduct of the petitioner was "the gravest act of misconduct" which deserved the punishment of dismissal from service." In **Randhir Singh's case (supra)** the delinquent official had remained absent during the period of his suspension. Here in the present case the petitioner did not report for duty at the new station of his posting continuously for 34 days without any intimation to the concerned authorities with regard to the compelling circumstance, if there was any. In **P.K.Khanna** and **Jatinder Singh's** cases (supra) there were procedural lapses in conducting the inquiry proceedings against the delinquent officials therein, respectively. In the present case no procedural lapse on the part of the respondents has been pointed out by the petitioner in the writ petition. Thus, the ratio of the authorities cited by the learned counsel for the petitioner is not applicable to facts appearing in the present case.

Consequently, there is no merit in this petition. It is, accordingly, dismissed. However, there shall be no order as to costs.

May 23, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**